

**CHAPTER 75-03-15**  
**RATESETTING FOR PROVIDERS OF SERVICES TO FOSTER CHILDREN -**  
**GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES**

Section

75-03-15-01	Definitions
75-03-15-02	Financial Reporting Requirements
75-03-15-03	Client Census
75-03-15-04	Ratesetting
75-03-15-05	Cost Allocation
75-03-15-06	Private Pay Rates
75-03-15-07	Allowable Costs for Maintenance and Administration
75-03-15-08	Rehabilitation Rate
75-03-15-09	Nonallowable Costs
75-03-15-10	Revenue Offsets
75-03-15-11	Related Organization
75-03-15-12	Home Office Costs
75-03-15-12.1	Startup Costs
75-03-15-13	Taxes
75-03-15-13.1	Depreciation
75-03-15-14	Cost Allowability and Limitations
75-03-15-15	Variance
75-03-15-16	Reconsiderations and Appeals

**75-03-15-01. Definitions.**

1. "Accrual basis" means the recording of revenue in the period revenue is earned, regardless of when revenue is collected, and the recording of expenses in the period expenses are incurred regardless of when expenses are paid.
2. "Administration" means the cost of activities performed by the facility staff in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.
3. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by this chapter.
4. "Chain organization" means a group of two or more program entities which are owned, leased, or, through any other device, controlled by one business entity.
5. "Department" means the North Dakota department of human services.
6. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.

7. "Interest" means the cost incurred with the use of borrowed funds.
8. "Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.
9. "Reasonable cost" means the cost of providing food, clothing, shelter, daily supervision, school supplies, and personal incidentals for children in care, staff liability insurance with respect to children in care, travel of the child to the child's home for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in conformity with applicable federal and state laws, regulations, rules, and quality and safety standards. Reasonable cost takes into account that the facility seeks to minimize costs and that actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.
10. "Related organization" means an organization which a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the facility. Control exists if an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.
11. "Report year" means the facility's fiscal year.
12. "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-02. Financial reporting requirements.**

1. Records.
  - a. The facility shall maintain on the premises the required census records and financial information sufficient to provide a proper audit or review. For any cost being claimed on the cost report, adequate data must be available and provided to the department in the form and manner requested by the department as of the audit date, to fully support the report item.
  - b. If several programs are associated with a group and the group's accounting and reports are centrally prepared, added information, for items known to be lacking support at the facility, must be

submitted with the cost report or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

- c. The facility shall maintain, for a period of not less than three years following the submission date of the cost report to the department, financial and statistical records of the period covered by the cost report, which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit must be retained until final resolution. Each facility shall make the records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting, in accordance with generally accepted accounting principles, must be used for cost reporting purposes. However, if conflicts occur between ratesetting procedures and generally accepted accounting principles, ratesetting procedures must prevail. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at yearend and when subsequently reported.
- b. To properly facilitate auditing, the accounting system must be maintained in a manner that ensures cost accounts are grouped by cost category and are readily traceable to the cost account.
- c. The cost report must be submitted on or before the last day of the third month following the facility's report year. The report must contain all costs of the facility, adjustments for nonallowable costs, and client days.
- d. Upon request, the following information must be made available:
  - (1) A statement of ownership including the name, address, and proportion of ownership of each owner.
  - (2) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the facility, or a certification that the content of any of these documents remain unchanged since the most recent statement given pursuant to this subsection.
  - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report.

- (4) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services that are claimed as allowable costs.
- e. If the facility fails to file the cost report on or before the due date, or any extension granted by the department in writing, whichever is later, the department may impose a nonrefundable penalty of ten percent of any amount claimed for payment. The penalty may be imposed after the last day of the first month following the later of the due date or the end of any written extension and, once imposed, continues through the month in which the statement or report is received.
- f. The facility shall make all adjustments and allocations necessary to arrive at allowable costs. The department may reject any cost report if the information filed is incomplete or inaccurate. In the event that a cost report is rejected, the department may impose the penalties described in subdivision e.
- 9. The department may grant an extension of the reporting deadline to a facility. To receive an extension, a facility shall submit a written request to the division of children and family services.
- 3. The department shall perform an audit of the latest available report year of each facility as necessary and shall retain for at least three years all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performing audits and in establishing rates. Audits must meet generally accepted governmental auditing standards.
- 4. Penalties for false reports.
  - a. A false report is one wherein a facility knowingly supplies inaccurate or false information in a required report that results in an overpayment. If a false report is received, the department may:
    - (1) Immediately adjust the facility's payment rate to recover the entire overpayment within the rate year;
    - (2) Terminate the department's agreement with the facility;
    - (3) Prosecute under applicable state or federal law; or
    - (4) Use any combination of the foregoing actions.
  - b. If a facility claims costs that have been previously adjusted as a nonallowable cost, the department may determine that the report is a false report. Previously adjusted costs that are the subject of a request for reconsideration or appeal must be identified as

unallowable costs. The facility may indicate that the costs are not claimed, under protest, to perfect a claim if the request for reconsideration or appeal is successful.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-03. Client census.**

1. A daily census record must be maintained by the facility. Any day for which services are provided or payment is ordinarily sought for an available bed must be counted as a client day. The day of admission or death must be counted. The day of discharge must be counted if payment is sought for that day.
2. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
  - a. Identification of the client;
  - b. Entries for all days. Entries cannot be made solely by exception;
  - c. Identification of type of day, i.e., shelter, outbased day, regular program; and
  - d. Monthly totals by resident and by type of day.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-04. Ratesetting.**

1. The established rate is based on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. No retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for in this chapter.
2. Desk audit rate.
  - a. The department will establish desk audit rates for maintenance and rehabilitation, based on the cost report, which will be effective the first day of the seventh month following the facility's fiscal yearend.

- b. The desk rates will continue in effect until final rates are established.
- c. The cost report will be reviewed taking into consideration the prior year's adjustments. Facilities will be notified by telephone or mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make appropriate adjustments, including adjustment factors, and issue the desk rates.
- d. No reconsideration will be given by the department for the desk rates unless the facility has been notified that the desk rates are the final rates.

3. Final rate.

- a. The cost report may be field-audited to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the facility from the department.
- b. The final rate for rehabilitation will be effective beginning the first day of the seventh month following the facility's fiscal yearend.
- c. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the facility.
- d. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least five cents per day.
- e. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.

4. Special rates.

- a. Facilities providing services for the first time.
  - (1) Rates for a facility which is providing services which are purchased by the department will be established using the following methodology for the first two fiscal years of the facility if such period is less than twenty-four months.
    - (a) The facility must submit a budget for the first twelve months of operation. A final rate will be established for

a rate period which begins on the first of the month in which the facility begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first-year final rate.

- (b) Upon completion of the first twelve months of operation, the facility must submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.

- [1] The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.

- [2] The twelve-month cost report will be used to establish a rate for the remainder of the second rate year. Appropriate adjustment factors will be used to establish the rate.

- (2) The facility must submit a cost report which will be used to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the center's fiscal year.

b. Facilities changing ownership.

- (1) For facilities changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.

- (2) The rate for the second rate year after a change in ownership occurs will be established as follows:

- (a) For a facility with four or more months of operation under the new ownership during the report year, a cost report for the period since the ownership change occurred will be used to establish the rate for the next rate year.

- (b) For a facility with less than four months of operation under the new ownership in the reporting year, the prior report year's costs as adjusted for the previous owner will be indexed forward using appropriate adjustments.

c. Facilities having a capacity increase or major renovation or construction.

- (1) For facilities which increase licensed capacity by twenty percent or more or have renovation or construction

projects in excess of fifty thousand dollars, the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete may be adjusted to include projected property costs. The adjusted rate will be calculated based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical census, plus a rate for property costs based on projected property costs divided by projected census. The established rate for rehabilitation, including projected property costs, will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary. The established rate for maintenance, including projected property costs, will be effective on the first day of the month in which notification of the rate is given to the facility after the renovation or construction is complete or the licensed capacity increased.

- (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, a rate will be established based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported census, plus a rate for property costs, based on projected property costs, divided by projected census.

d. Facilities that have changes in services or staff.

- (1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or staff to the existing program.
- (2) The facility must submit information to the division of children and family services supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff or costs associated with the increase in services.
- (3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate will be adjusted. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.
- (4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3, the facility may request that consideration be given to additional costs. The



facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period.

5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-15-07. For any client whose rate is paid in whole or in part by the department, no payment may be solicited or received from the client or any other person to supplement the rate as established.
6. For a facility terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until clients can be relocated.
7. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Rate adjustments to provide appropriate compensation may be requested if major unforeseeable expenses are incurred. A request for rate adjustment may be made to the department, which shall determine if the expense is resident-related.
8. Limitations.
  - a. The department may accumulate and analyze statistics on costs incurred by the facilities. These statistics may be used to establish cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of the cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations.
  - b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. 670 et seq.].
  - c. A facility is expected to maintain an average annual occupancy rate of seventy-five percent. The computed resident days apply only to the following areas:
    - (1) Administrative costs;
    - (2) Plant operation costs; and

(3) Property costs.

A reserved paid bed is counted as an occupied bed. A waiver of the minimum bed occupancy allowance may be made for new facilities or existing facilities at the discretion of the department.

- d. Administrative cost must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.

9. Rate adjustments.

- a. Adjustment factors may be applied to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.
- b. Rate adjustments may be made to correct departmental errors subsequently determined.
- c. An adjustment must be made for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

**History:** Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-05. Cost allocation.** Direct costing of allowable costs must be used whenever possible. If services of a facility are jointly used for maintenance, service, administration, or nonallowable activities, the facility shall allocate the cost by using a method which reflects the most reasonable cost based on the data available. Allocation methods described in this section must be used.

- 1. Salaries that cannot be reported based on direct costs are to be allocated using time studies. Time studies must be preapproved by the department and must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each assigned area of responsibility. Allocation percentages based on the time studies are to be used starting with the next pay period following completion of the time study or averaged for the report year. The methodology used by the facility may not be changed without approval by the department.
- 2. Housekeeping costs must be allocated based on usable square footage.
- 3. Property and plant costs must be allocated based on usable square footage.

4. Administration costs must be allocated on the basis of percentage of the total direct cost of the activity to the total costs, excluding administration.
5. Fringe benefits must be allocated based on the ratio of salaries to total salaries.
6. Dietary costs and food must be allocated based on meals served.
7. Vehicle expenses must be allocated based on mileage logs. Mileage logs must include documentation for miles driven and the purpose of travel. If sufficient documentation is not available to determine to which cost category vehicle expenses are to be allocated, vehicle expenses must be assigned to administration.
8. Costs not direct costed, or allocable using methods identified in subsections 1 through 7, must be included as administration costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-06. Private pay rates.**

1. The department's foster care maintenance rate and rehabilitation rate, combined, must not exceed the usual and customary rate charged to private pay or other public pay residents.
2. If the established rate exceeds the rate charged to nondepartmental or private pay clients for a service, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received from the department at the higher rate, the facility shall refund the overpayment within thirty days. The refund must be the difference between the established rate and the lowest rate charged to nondepartment or private pay clients times the number of department client days paid during the period in which the established rate exceeded the nondepartmental or private rate, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not refunded within thirty days. Interest charges on these refunds are not allowable costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-07. Allowable costs for maintenance and administration.**

1. **Maintenance rate.** Costs includable in the rate for room and board include those described in this subsection, unless limited by section 75-03-15-09.
  - a. Salary and fringe benefits for direct care personnel, which must be limited to:
    - (1) The child care workers' supervisor;
    - (2) Child care workers;
    - (3) Relief child care workers;
    - (4) Cooks;
    - (5) Janitors and housekeepers; and
    - (6) Laundry.
  - b. Food. Actual food costs. The value of donated food may not be included in food costs.
  - c. Operating supplies. The cost of supplies necessary to maintain the household for the residents. Costs include cleaning supplies, paper products, and hardware supplies.
  - d. Personal supplies and allowances. The cost of supplies used by an individual resident, including medicine chest supplies, personal hygiene items, sanitary needs, and moneys given periodically to residents for personal use. Personal supplies and allowance does not include payment, whether in cash or in kind, for work performed by the resident or for bonuses or rewards paid based on behavior.
  - e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school.
  - f. Clothing. The cost of clothing to maintain a resident's wardrobe.
  - g. Recreation. Costs incurred for providing recreation to the residents, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.
  - h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable TV.

- i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. Vehicular telephone costs are not allowable.
  - j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the residents. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.
  - k. Travel. All costs related to transporting residents, exclusive of evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the amount established by the internal revenue service.
  - l. Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, an allocation must be made in accordance with section 75-03-15-05.
  - m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not purchased with funds made available through other government programs or grants is allowable.
  - n. Insurance. The cost of insuring property and equipment used in the maintenance of residents and liability insurance for direct care staff.
  - o. Medical. Costs for necessary medical-related items for residents which are not covered by insurance or governmental medical care programs, provided that facility records demonstrate that reasonable attempts have been made to secure insurance or program benefits. Costs may include resident physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment.
  - p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.
2. **Administration costs.** Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection. Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:

- a. Compensation for administrators, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing personnel, and security personnel;
- b. Office supplies and forms;
- c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;
- d. The cost of telephone service not specifically included in other cost categories;
- e. Postage and freight;
- f. Professional fees for legal, accounting, and data processing;
- g. Central or home office costs;
- h. Personnel recruitment costs;
- i. Management consultants and fees;
- j. Dues, license fees, and subscriptions;
- k. Travel and training not specifically included in other costs categories;
- l. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;
- m. The cost of routine repairs and maintenance of property and equipment used to provide administration;
- n. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration;
- o. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration;
- p. Startup costs; or
- q. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-08. Rehabilitation rate.**

1. A rehabilitation rate for the facility must be established based on census and allowable social service costs. Costs which may be included in the rehabilitation rate determination are:
  - a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing, and other professional social service staff;
  - b. Staff development for the professional social service staff; and
  - c. Travel and telephone costs related to evaluations and social service activities.
2. The established rate must be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-09. Nonallowable costs.** Nonallowable costs include:

1. Administrative costs, overhead, and other expenses paid on behalf of employees who are not direct care personnel;
2. Advertising, except for reasonable advertising costs for employee recruitment, and public relations expenses;
3. Any cost which has not actually been incurred by the facility, including the value of donated goods and services;
4. Bad debt expenses;
5. Costs incurred solely to enhance income from investments;
6. Costs of securing contributions or donations;
7. Costs related to income-producing activities, including farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable;
8. Depreciation costs for idle facilities except when the facilities are necessary to meet caseload fluctuations;
9. Dues and subscriptions for employees;

10. Fines and penalties resulting from failure to comply with federal, state, and local laws;
11. Interest expense on borrowed funds or finance and late charges;
12. Recreational costs for activities, including staff only;
13. Religious salaries, space, and supplies;
14. Research and development costs;
15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the resident;
16. Any telephone costs, including mobile telephone, car telephone, cellular telephone, and beeper costs attributable to personal usage by residents and employees;
17. Costs related to facility-operated schools or to correspondence courses; and
18. Any costs unrelated to providing services to residents.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-10. Revenue offsets.** Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income is provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources shall reduce costs by the amount of the reimbursement.
2. **Food income.** Facilities receiving revenue for food and related costs from other programs, including the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or other nonclients for meals or snacks shall reduce allowable food costs by the revenue received.



3. **Insurance recovery.** Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.
4. **Refunds and rebates.** Any refund or rebate received for a reported cost must be offset against the appropriate cost.
5. **Transportation income.** Any amount received for use of the facility's vehicles must be offset to transportation costs.
6. **Vending income.** Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to maintenance costs.
7. **Gain on the sale of assets.** Gain from the sale of an asset must be offset against depreciation expenses.
8. **Rental income.** Revenue received from outside sources for the use of facility buildings or equipment must be offset to property expenses.
9. **Grant income.** Grants, gifts, and awards from the federal, state, or local agencies must be offset to the costs which are allowed under the grant.
10. **Other cost-related income.** Miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, must be offset to the cost category where the item was expensed.
11. **Other income from government sources.** Other income to the facility from local, state, or federal units of government may be determined by the department to be an offset to costs.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-11. Related organization.**

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. The facility shall identify such related organizations and costs, and allocations must be submitted with the cost report.

2. A facility may lease buildings or equipment from a related organization. In that case, the rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to clients. The actual costs associated with the asset are limited to depreciation, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

#### **75-03-15-12. Home office costs.**

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a facility in itself, the home office may furnish to the individual facility central administration or other services, including centralized accounting, purchasing, personnel, or management services. Only the home office's actual costs of providing these services are includable in the facility's allowable costs under the program.
2. Costs that are not allowed in the facility may not be allowed as home office costs that are allocated to the facility.
3. Any service provided by the home office which is included in costs as payments by the facility to an outside vendor or which duplicates costs for services provided by the facility is considered a duplication of costs and is not allowed.
4. If the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-12.1. Startup costs.** In the first stages of operation, a new facility incurs certain costs in developing the ability to care for clients prior to admission. Staff is obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to client care during that period because there are no clients receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and must be

recognized as allowable administration costs amortized over sixty consecutive months starting with the month in which the first client is admitted.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

### **75-03-15-13. Taxes.**

1. Taxes assessed against the facility in accordance with the levying enactments of several states and lower levels of government and for which the facility is liable for payment are allowable costs, except for those taxes identified as unallowable in section 75-03-15-09.
2. Whenever exemptions to taxes are legally available, the facility shall take advantage of exemptions. If the facility does not take advantage of available exemptions, the expense incurred for taxes may not be recognized as an allowable cost under the program.
3. Special assessments in excess of one thousand dollars, which are paid in a lump sum, must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

**History:** Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

### **75-03-15-13.1. Depreciation.**

1. **General principles.** Ratesetting principles require that payment for services must include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of these assets are considered to be ongoing and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report.
2. **Depreciation methods.**
  - a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as

those offered under the asset depreciation range system, are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year, and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different from that submitted on the cost report, a reconciliation must be prepared by the facility.

- b. Facilities shall use a composite useful life of ten years for all equipment and land improvements and four years for vehicles. Buildings and improvements to buildings are to be depreciated over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

### 3. **Acquisitions.**

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars for each item, the cost must be capitalized and depreciated over the estimated useful life of the asset, except as provided for in subsection 3 of section 75-03-15-13. Costs, including architectural, consulting and legal fees, and interest, incurred during the construction of an asset, must be capitalized as a part of the cost of the asset.
- b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.

- 4. **Recordkeeping.** Proper records must provide accountability for the fixed assets and must also provide adequate means by which depreciation may be computed and established as an allowable client-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

- 5. **Donated assets.** For purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. If the facility's records do not contain the fair market value of the donated asset as of the date of the donation, an appraisal must be made. The appraisal must be made by a recognized appraisal expert and must be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets, thereby negating the need for a fair market value determination.

## 6. **Basis for depreciation.**

- a. Determination of the cost basis of a facility and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. If the issue arises, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
  - (1) If the sale is bona fide, the cost basis must be the cost to the buyer.
  - (2) If the sale is not bona fide, the cost basis must be the seller's cost basis less accumulated depreciation.
- b. The cost basis of a facility, including depreciable assets which are purchased as an ongoing operation, must be the seller's cost basis less accumulated depreciation.
- c. The cost basis of a facility, including depreciable assets which have been used in any programs which are funded in whole or in part by the department, must be the cost basis used by the other program less accumulated depreciation.
- d. Sale and leaseback transactions must be considered a related party transaction. The cost basis of a facility, including depreciable assets purchased and subsequently leased to a provider who operates the facility, must be the seller's cost basis less accumulated depreciation.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-14. Cost allowability and limitations.** Any questions regarding cost allowability and limitations are governed by title IV-E of the Social Security Act [42 U.S.C. 670 et seq.] and 45 CFR part 74, unless further limited by this chapter. The department sets rates under this chapter for not-for-profit organizations only and purchases group home and residential child care facility services for children in foster care only from facilities in North Dakota for which rates have been set under this chapter.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

**75-03-15-15. Variance.** Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from

the provisions of this chapter upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of a facility and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to a request for reconsideration or an appeal.

**History:** Effective November 1, 1985; amended effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

## **75-03-15-16. Reconsiderations and appeals.**

### **1. Reconsiderations.**

- a. A facility dissatisfied with the final rate established shall request a reconsideration of the final rate before a formal appeal may be made. Any requests for administrative reconsideration must be filed with the department within thirty days of the date of the rate notification.
- b. The department shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

2. **Appeals.** A facility dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. This appeal must be filed as provided under chapter 75-01-03.

**History:** Effective March 1, 1999.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2